



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



MBC Timber, Inc.
Attn: Michael Carter, President
PO Box 316
Bradford, NH 03221

Re: Town of Bradford, NH
Tax Map 5, Lot 7

**ADMINISTRATIVE ORDER
No. WD 03-007**

April 17, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to MBC Timber, Inc. pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.
2. MBC Timber, Inc. ("MBC Timber") is a New Hampshire corporation having a mailing address of P.O. Box 316, Bradford, NH 03221. Michael Carter is the President of MBC Timber.

C. STATEMENTS OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".
4. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.

5. Pursuant to RSA 485-A:17, III and Env-Ws 415.04, timber harvesting permits are granted by completing the New Hampshire Department of Revenue Administration's Notice of Intent to Cut Wood or Timber form ("Intent to Cut").

6. RSA 227-J:7, the forest management statute, states that "[p]ursuant to RSA 485-A:17, any person proposing to dredge, excavate, place fill, mine, transport forest products, or undertake construction in or on the border of surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create unnatural runoff shall comply with the provisions of RSA 485-A. Failure to comply with these requirements may result in penalties under RSA 485-A."

7. RSA 227-J:6, III provides that "Pursuant to the rules of the department of environmental services, skid trails, truck roads and culverts, bridges, pole fords, or other crossing on the skid trails or truck roads shall be constructed in accordance with procedures as currently cited in the *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire* ["BMP Manual"], published by the department."

8. Wt 304.05(b) provides that skid trails and truck roads shall be laid out using appropriate erosion control devices, as outlined in the BMP Manual so that the grade approaching a stream or pond is broken, and surface water is dispersed. Crossings of streams and wetlands shall be kept to a minimum and shall be located to minimize impact in accordance with Wt 302.04(b) and (c).

9. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.

10. DeSpirito Realty Trust, operated and controlled by Emil J. DeSpirito, Trustee and Rose G DeSpirito, Trustee, formerly owned parcels of land located on Fairgrounds Road and a deeded Right of Way located on West Road in the town of Bradford (the "Right of Way"), more specifically identified on the Town of Bradford Tax Map 5 as Lot 7 (formerly Town of Bradford Tax Map 29, Lot 176 and Lot 125) and Lot 27 (formerly Bradford Tax Map 29, Lot 109 and Lot 123) (the "Property"). Lot 27 is subject to the Right of Way..

11. On July 27, 2001 Emil J. DeSpirito, Trustee and Robert DeSpirito filed an Intent to Cut with the Town of Bradford for timber harvesting activities to occur on Lot 7 of the Property. The Intent to Cut identified MBC Timber, operated by President Michael Carter, as the logger for the forestry operations to be performed on Lot 7 of the Property. The Intent to Cut was signed by Mr. Carter prior to reassignment of Tax Map and lot numbers in Bradford, and the Intent to Cut incorrectly identified Lot 7 of the Property as Tax Map 29, Lots 176 and 126.

12. On March 5, 2002, DES acknowledged receipt of "*A Notification(s) of Forest Management Activities Having Minimum Wetlands Impact*" (the "Notification") submitted to DES by Emil DeSpirito for forestry work to be performed on the Property.

13. On May 3, 2002, DeSpirito Realty Trust sold the Property and the Right of Way to Timberstand Investment Co., Inc. ("Timberstand"), a New Hampshire corporation operated and controlled by Michael Carter, President of MBC Timber.

14. On May 16, 2002, DES received a complaint from the Town of Bradford Conservation Commission stating that MBC Timber had not implemented erosion control measures on Lot 7 of the Property, and had impacted wetlands and surface waters on the Property.

15. On May 20, 2002, DES personnel conducted a field inspection of the Property. During the inspection, DES personnel observed the following deficiencies:

- a. Sediment had impacted approximately 75 linear feet of a perennial stream on the Property;
- b. In excess of 2,000 square feet of wetlands associated with the stream had been filled with sediment to a depth of 6 – 8 inches;
- c. Disturbed areas on the Property were not stabilized;
- d. Erosion control measures were not installed on the Property
- e. The hydrology of the site had been altered by logging and construction activities on the Property;
- f. Sediment was observed in wetlands adjacent to the disturbed areas on the Property (in addition to those noted in "b" above), and slopes adjacent to wetlands were unstable; and
- g. Appropriate wetland crossings had not been constructed and, as a result, wetlands had been rutted by machinery tracks.

16. On May 21, 2002, personnel from the New Hampshire Department of Resources and Economic Development, Division of Forests and Lands ("DRED"), issued Official Notice No 2-02-03 (the "Notice") to Mr. Carter and MBC Timber, at the request of DES. The Notice cited Mr. Carter and MBC Timber for "operating in wetlands without installing proper crossing devices resulting in wetlands and water quality violations" and required Mr. Carter and MBC Timber to "cease and desist operating in wetlands." The Notice incorrectly identified Lot 7 of the Property as Bradford Town Tax Map 5, Lot 18.

18. On July 16, 2002, DES personnel conducted an on-site inspection of Lot 7 of the Property with Mr. Carter and Robert Stewart, Jr., a wetland scientist contracted by Mr. Carter and observed the following deficiencies:

- a. A perennial stream and adjacent wetlands were impacted by the deposition of sediment:

- b. There was encroachment into wetlands in an area immediately south of a landing area;
- c. Erosion of steep skidder trails was evident;
- d. Natural runoff had been impeded by alteration of terrain in upland areas; and
- e. A wetland area on the main logging road had been rutted because a wetland crossing had not been installed.

19. On September 30, 2002, DES personnel conducted a follow-up inspection of Lot 7 of the Property with Mr. Carter and Robert Stewart Jr. and observed the following:

- a. Previously observed sediment depositions had been removed from the perennial stream and adjacent wetlands;
- b. Culvert headwalls were unstable and some erosion was evident; sediment had entered the perennial stream in additional locations;
- c. Roadside swales, which directed runoff to the perennial stream, were unstable and erosion control measures were inadequate; and
- d. Areas that had been discussed during the July inspection had been stabilized, but new areas on the site showed evidence of erosion.

20. On November 1, 2002, DES received a letter from the Bradford Conservation Commission requesting information about enforcement actions.

21. On November 4, 2002, DES personnel inspected the culvert at the entrance to Lot 7 of the Property from Fairgrounds Road. DES personnel observed the following:

- a. Proper culvert headwalls were not installed;
- b. Slopes adjacent to the culvert were unstable and eroding; and
- c. Silt fence had not been properly installed adjacent to the culvert.

22. On November 13, 2002, DES received a complaint from the Bradford Conservation Commission that best management practices were still not being followed on Lot 7 of the Property, specifically, equipment and construction was occurring in wetlands and streams without a permit from DES, erosion problems were being caused by machinery operations, and more than 100,000 sq. ft. of terrain was altered without a permit from DES.

23. On March 28, 2003, DES personnel conducted a follow-up inspection of the property. Mr. Carter was present for a portion of the inspection. The following observations were noted:

a. Existing snow cover prevented observation of the ground surface in areas outside the immediate vicinity of existing haul roads.

b. Along a steeper section of a haul road originating from Fairgrounds Road, runoff from snow melt was causing erosion of the road surface and roadside drainage swales. Mr. Carter was advised to construct water bars and diversions to direct the runoff onto adjacent undisturbed upland areas. Mr. Carter indicated he would construct said items on this day.

c. A haul road originating from West Road was observed to be soft and rutted. Two pieces of wheeled logging vehicles were observed at the entry to the haul road but no traffic was observed. Two 18-inch culvert crossings were observed along the haul road but it could not be determined whether the crossings were of wetland areas or if any impacts had occurred.

D. DETERMINATION OF VIOLATIONS

1. MBC Timber has violated RSA 482-A:3, I by filling approximately 75 linear feet of a perennial stream on Lot 7 of the Property without a permit from DES.
2. MBC Timber has violated RSA 482-A:3, I by filling more than 2,000 square feet of wetlands associated with the perennial stream without a permit from DES.
3. MBC Timber has violated RSA 482-A:3, I by dredging wetlands on Lot 7 of the Property by driving heavy machinery through them without a permit from DES.
4. MBC Timber has violated RSA 485-A:17 and Env-Ws 415.04 by failing to install and maintain adequate erosion control measures during forest management activities on Lot 7 of the Property.
5. MBC Timber has violated Wt 304.05 by failing to install appropriate wetland crossings and utilize appropriate erosion control devices.

E. ORDER

Based on the above findings, DES hereby orders MBC Timber as follows:

1. **Within 30 days of the date of this Order**, prepare a temporary stabilization plan ("Plan") for disturbed areas on the Property, and submit said Plan to DES for approval. The Plan shall include a schedule for implementing the measures described in the Plan.
2. Implement the approved Plan on the Property according to the schedule detailed in the Plan.
3. **Within 30 days of the date of this Order**, submit the appropriate application(s) for wetlands permit(s) for the Property.

4. Within 30 days of the date of this Order, submit a restoration plan for the restoration of the wetland and surface waters to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and shall include:

- a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions on the sites, with wetland boundaries and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
- c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration and mitigation areas;
- d. A description of the proposed construction sequence, equipment, and methods for accomplishing restoration, and anticipated restoration compliance date; and
- e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES no later than September 15, 2003, and September 15, 2004.

5. Retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with Paragraph E.4 above and to submit the restoration progress reports.

6. Implement the restoration plan proposed in accordance with Paragraph E.4 above only after receiving written approval and as conditioned by DES.

7. Submit the completed wetlands application and restoration plan, including erosion and sediment control plans and any other submissions made in connection with this Order, **other than appeals**, to DES as follows:

Ridgely Mauck, P.E.
Land Resource Management Program
DES Water Division
6 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095

F. APPEAL

Any person aggrieved by determination D.1 through D.3 and D.5 of this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order pursuant to RSA 482-A:10. A motion for rehearing must describe in detail each ground for the request. DES may grant a reconsideration if in its opinion, good reason is provided in the motion.

Any person aggrieved by determination D.4 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Filing an appeal or motion for reconsideration of the Order will not automatically relieve MBC Timber, Inc. of its obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. MBC Timber, Inc. remains obligated to comply with all applicable requirements. DES will continue to monitor MBC Timber, Inc.'s compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.

COPY

Harry T. Stewart, P.E., Director
Water Division

COPY

Robert Monaco, Acting Commissioner
Department of Environmental Services

CERTIFIED MAIL # 7099 3400 0003 0688 0009

cc: Mark Harbaugh, DES Legal Unit
Pat Gruttemeyer, Public Information Officer
MaryAnn Tilton, DES Wetlands Bureau
Robert Foor, Town of Bradford Planning Board
Town of Bradford Conservation Commission